



# DIVORCE BY MUTUAL CONSENT UNDER THE HINDU MARRIAGE ACT, 1955: AN ANALYSIS

*Dr. Jaswinder*

*Vice Principal and Associate Professor in Laws  
G.H.G. Institute of Law, Sidhwan Khurd, Ludhiana  
jasrupdhamija1985@gmail.com*

## ABSTRACT

Divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955 provides a relatively conciliatory path for spouses to dissolve a marriage without proving fault. Introduced by the 1976 Amendment, the provision seeks to balance individual autonomy, social stability, and protection against hasty decisions. This paper critically examines the statutory scheme, procedural safeguards, advantages and limitations of mutual consent divorce in India. Particular focus is placed on the “cooling-off period,” the requirement of separation, issues of fairness and power balance between spouses, recent jurisprudence and suggestions for reform.

**Keywords:** Divorce, Mutual Consent, Cooling off Period, Hindu Marriage, Legal Framework.

## INTRODUCTION

Marriage under Hindu law has traditionally been regarded as a sacrament rather than a contract. The enactment of the Hindu Marriage Act, 1955 represented a shift by recognizing various grounds for dissolution of marriage. Divorce in any society marks the end of one of the most intimate and personal human relationships. In India, divorce is more than just a legal process - it is a profoundly emotional, cultural, and often stigmatized experience because in India marriage is often seen not just as a contract between two individuals but as a sacred, lifelong bond deeply interwoven with family, religion, and social honour,.

Among the various ways of dissolving the marriage in India, divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955 offers perhaps the least adversarial path. Enacted through the Marriage Law Amendment Act, 1976, this provision acknowledges that not all marriages end in cruelty or misconduct; some simply break down irretrievably, with both partners agreeing that parting ways is better than prolonged conflict.

The mutual consent route to divorce was introduced with the intention of making the process less painful—minimizing conflict, reducing legal expenses, and removing the need to assign blame. On the surface, it offers a more dignified and respectful way for couples to part ways. However, in practice, several challenges have emerged. Mandatory waiting periods often lead to frustrating delays, leaving couples in emotional and legal oblivion. Additionally, the process can be vulnerable to unfairness - particularly when one partner feels pressured or coerced into agreement, making the “mutual” aspect questionable. The legal procedures themselves can be confusing, especially for those without legal support, leading to further stress and uncertainty. These practical hurdles raise a larger question: is the current legal framework truly equipped to support couples through this process in a way that is more concise, fair, clear, and compassionate?

## **LEGAL FRAMEWORK OF DIVORCE BY MUTUAL CONSENT UNDER HINDU MARRIAGE ACT, 1955**

The provision of Divorce by Mutual consent is Governed by Section 13B of the Hindu Marriage Act, 1955. Inserted by the Amendment of 1976, it requires both spouses to jointly file a petition declaring they have lived separately for at least one year, cannot live together, and mutually agree to dissolve their marriage.

The process involves two motions: the first to file the petition and the second after a statutory waiting period of six months (which can be waived in certain cases). Divorce by mutual consent ensures a dignified and harmonious resolution to marital disputes.

### **Section 13B prescribes a two-stage process for obtaining a decree of divorce by mutual consent:**

1. **Section 13B(1): Filing the First Motion :** To initiate the process, a joint petition must be filed by both spouses before a family court having jurisdiction. The petition must satisfy the following conditions:
  - i) **Living Separately for One Year or More:** The parties must have lived separately for at least one year. Importantly, “living separately” does not necessarily imply residing in different locations. It signifies a cessation of marital relations.
  - ii) **Inability to Live Together:** The petition must declare that the spouses are unable to live together due to irreconcilable differences.
  - iii) **Mutual Agreement to Dissolve the Marriage:** Both parties must mutually agree that the marriage should be dissolved.
- 2) **Section 13B(2): Filing the Second Motion :** After filing the first motion, a cooling-off period of six months is prescribed. During this time, the parties are encouraged to reconsider their decision. If reconciliation efforts fail, the second motion can be filed, subject to the following conditions:
  - i. **Timeline:** The second motion must be filed no earlier than six months and no later than eighteen months after the first motion.

ii. **Conditions for Decree:** The court, after hearing the parties and ensuring the truthfulness of their statements, may pass a decree dissolving the marriage.

At its heart, this legal provision is meant to give couples a bit of breathing room - a pause in the middle of what can be an emotionally overwhelming time. Instead of rushing straight into divorce, the law offers a chance to slow down, reflect, and ask the difficult questions: Is this really the end? Can we work through this? This cooling off time period provides a space for honest introspection, where both partners can consider whether there's still something worth saving - especially when children and deep emotional bonds are involved. The intention behind providing the period is not to delay or complicate things, but to make sure that such a life-altering decision isn't made in the heat of the moment. Sometimes, that time apart can bring clarity, and sometimes it simply confirms what both already knew - but either way it is meant to ensure the choice is truly thoughtful and final.

### **CHANGING HORIZONS OF DIVORCE BY MUTUAL CONSENT**

A significant judicial milestone in the evolution of divorce law in India came with the Supreme Court's decision in **Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746**. In this landmark case, the Court interpreted Section 13B (2) of the Hindu Marriage Act, which prescribes a mandatory six-month waiting period for divorce by mutual consent and held that this period is directory rather than mandatory. In other words, the Court clarified that this waiting period is not a rigid requirement and can be waived under specific circumstances.

The judgment recognized that when certain conditions are met, enforcing a compulsory waiting period may do more harm than good. Supreme Court highlighted that there are certain factors that should be kept in mind while waiving the cooling of time period. These factors include:

- 1) The length of time for which the parties had been married;
- 2) how long the parties had stayed together as husband and wife;
- 3) the length of time the parties had been staying apart;
- 4) the length of time for which the litigation had been pending
- 5) whether there were any other proceedings between the parties;
- 6) whether there was any possibility of reconciliation;
- 7) whether any children born out of the wedlock;
- 8) whether the parties arrived at a genuine settlement which takes care of alimony, custody of children or any other pending issues.

The Court emphasized that the underlying spirit of Section 13B is to facilitate a peaceful and dignified exit from a broken marriage - not to trap individuals in legal limbo when the relationship has clearly and irreversibly ended. By allowing the waiting period to be waived in such cases, the judgment brought much-needed flexibility and sensitivity into the legal process, ensuring that the law serves people - not the other way around.

This ruling not only reaffirmed the importance of judicial discretion but also reflected a more compassionate and realistic understanding of marital breakdowns. It signaled a shift in focus from procedural rigidity to individual well-being, paving the way for a more humane approach to family law.

The law laid down in *Amardeep Singh vs Harveen Kaur* regarding waiver of cooling period has been reiterated in the recent judgement of Hon'ble Supreme Court in *Amit Kumar vs Suman Beniwal* 2021 SCC online SC 1270. Other High Courts (Bombay HC, Delhi HC etc.) have followed this reasoning in various cases to waive the cooling-off period in specific circumstances.

The theory of divorce by mutual consent offers several significant advantages, making it a progressive and compassionate approach to marital dissolution. It allows both spouses to part ways amicably, without assigning blame or airing personal grievances in a public courtroom setting. This not only reduces emotional distress but also helps preserve the dignity and privacy of both parties. By minimizing conflict, it often leads to quicker, less expensive proceedings, easing the burden on the judiciary and the individuals involved. Most importantly, it fosters a spirit of cooperation, which can be especially valuable when children are involved, as it encourages healthier post-divorce relationships and shared parenting arrangements. It was also mentioned in the 71st Report of the Law Commission of India (1978) that Divorce by mutual consent allows the couples to end a marriage peacefully, where both agree the relationship is irretrievably broken, is in the interest of justice and individual liberty.

Despite its progressive framework and numerous advantages, the theory of divorce by mutual consent is not free from shortcomings. One significant concern is the potential for coercion or undue influence, where one spouse - often the economically or emotionally weaker partner, may be pressured into agreeing to a divorce or accepting unfair terms. The Mulla's Principles of Hindu Law (21st Ed., LexisNexis) highlights that mutual consent must be "free and voluntary" for the divorce to be valid. However, in practice, power imbalances within a marriage can compromise true consent.

Additionally, the Supreme Court in *Sureshta Devi v. Om Prakash*, (1991) 2 SCC 25, emphasized that consent must continue till the final decree is passed, underlining that even at a late stage, consent given under pressure can be withdrawn.

Another concern is that mutual consent assumes a level of cooperation and communication between the spouses that may not exist in emotionally charged or abusive relationships therefore they are heading for divorce. Furthermore, procedural delays, such as the cooling-off period under Section 13B(2) of the Hindu Marriage Act, can cause unnecessary hardship even when there is no chance of reconciliation.

Finally, while the mutual consent route often bypasses contemporary litigation, it may inadvertently overlook critical issues like child custody, maintenance, or domestic violence when parties are eager to end the marriage

quickly. Without judicial scrutiny or adequate legal support, there is a risk of settlements that are expedient but not necessarily fair or just.

## **SUGGESTIONS FOR REFORMS**

- 1) Statutory Clarity and Guidelines on Conditions for Waiver of Cooling-Off Period:** While the Hon'ble Supreme Court in *Amardeep Singh v. Harveen Kaur* (2017) held that the six-month cooling-off period under Section 13B (2) is directory and may be waived in appropriate cases, there remains a lack of statutory clarity. To ensure consistency, there is a dire need that the the Hindu Marriage Act, 1955 be amended and S. 18 B should explicitly enumerate the grounds for waiver such as the duration of separation, age and vulnerability of the parties, prior attempts at reconciliation, mental or emotional suffering, and mutual settlement of key issues like custody and maintenance.
- 2) Mandatory Counselling or Legal Guidance Prior to Final Decree:** There should be a compulsory requirement for counselling or legal advice, particularly prior to the issuance of final decree. This would help ensure that both spouses, especially the more vulnerable party, fully understand their rights and the long-term consequences of the divorce settlement. This measure could act as a safeguard against coercion or uninformed consent, and promote more equitable outcomes.
- 3) Strengthened Judicial Scrutiny of Divorce Settlements:** There has to be a mandatory provision through which the Courts should be mandated to rigorously examine settlement agreements, particularly in cases where one party is unrepresented or lacks legal literacy, relating to alimony, property division, and child custody.
- 4) Institutionalized Data Collection and Empirical Analysis:** There is a pressing need for empirical research and data collection on the use of mutual consent divorce provisions. Studying patterns related to gender, socio-economic class, legal representation, and regional disparities would provide valuable insights into the actual functioning of the system. This evidence-based approach would enable policymakers to identify trends of misuse, structural inequities, or gaps in access to justice.

## **CONCLUSION**

Divorce by mutual consent in India provides a structured and relatively hassle-free way for couples to dissolve their marriage when they both agree to part ways. The legal framework ensures that the process is fair, with provisions for reconsideration and protection of both parties' rights. Recent judicial pronouncements have further streamlined the process, making it more flexible and sensitive to the needs of the individuals involved. Divorce by mutual consent under the Hindu Marriage Act, 1955 is a progressive legal mechanism aimed at providing a dignified, less adversarial exit from marriage. The judicial move to treat the cooling-off period as directory has made legal relief more accessible in suitable cases. However, significant challenges remain: ensuring real consent, protecting the vulnerable, preventing misuse, and maintaining consistency across jurisdictions. Reforms to clarify

waiver criteria, strengthen protections, ensure fairness, and improve procedural clarity may help to render mutual consent divorce more just and effective.

## REFERENCES

1. *Amardeep Singh vs. Harveen Kaur*, (2017) 8 SCC 746.
2. *Amit Kumar vs Suman Beniwal*, 2021 SCC online SC 1270
3. *Sureshta Devi v. Om Prakash*, (1991) 2 SCC 25
4. Mulla, Principles of Hindu Law (21st Edition, LexisNexis)
5. Vanshika Gupta “Is the cooling off period in HMA Mandatory or Directory: Analysis with the *Amardeep Singh v/s Harveen Kaur*.” <https://www.legalserviceindia.com/legal/article-6965-is-the-cooling-off-period-in-hma-mandatory-or-directory-analysis-with-the-amardeep-singh-v-s-harveen-kaur>
6. The Hindu, “Divorce by mutual consent: HC waives cooling-off period.” <https://www.thehindu.com/news/national/divorce-by-mutual-consent-hc-waives-cooling-off-period/article27084494>
7. “Six-month cooling period for granting divorce can be waived: SC.” <https://indianexpress.com/article/india/six-month-cooling-period-for-granting-divorce-can-be-waived-says-sc-hindu-law-4840452>
8. *Bombay HC waives cooling off period for estranged couple* (2024). <https://www.thehindu.com/news/national/bombay-high-court-waives-cooling-off-period-for-estranged-couple-says-realistic-approach-needed/article68492087.ece>
9. Suhana Sultana “Demystifying Divorce: Exploring the Hindu Marriage Act and Legal Procedures.” Available at: <https://www.legalshiksha.com/post/divorce-procedure-under-hindu-marriage-act-1955>
10. Deepti Mishra “Divorce under Hindu Marriage Act, 1955- Mutual Consent Theory.” Available at: <https://www.legalserviceindia.com/legal/article-6487-divorce-under-hindu-marriage-act-1955>
11. Ritojit Dasgupta & Subarno Banerjee, *An Analytical Study of Divorce by Mutual Consent under Hindu Marriage Laws*, International Journal of Law Management & Humanities Vol III Issue II 838-846 (2020) ISSN 2581-5369
12. Mehak Mahapatra & Princess Preet Kaur Kalra, *Critical Analysis of Divorce by Mutual Consent*, IJLMH (2021) Available at: <https://ijlmh.com/paper/critical-analysis-of-divorce-by-mutual-consent/>
13. Available at: <https://www.legalshiksha.com/post/divorce-procedure-under-hindu-marriage-act-1955>
14. Aishwarya Aggrwal, “Divorce by Mutual consent” Available at: <https://lawbhoomi.com/divorce-by-mutual-consent/>
15. Hirana, *Amardeep Vs. Harveen Kaur*, Available at: <https://www.benchnotes.in/post/amardeep-singh-vs-harveen-kaur-2017-2017-8-scc-746-divorce-by-consent>

16. Parul Gairola, “Relaxation of cooling off period in mutual Divorce”, Available at: <https://cdnbbsr.s3waas.gov.in/s37a68443f5c80d181c42967cd71612af1/uploads/2025/03/20250322176266212.pdf>
17. Divorce in India through Mutual Consent: Procedure and Legal Framework, Available at: <https://www.qualegalindia.com/divorce-by-mutual-consent-in-india.html>

